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FILED  
1119 O'Clock P.M.

JUN 13 2011

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

SANDRA K. MARKHAM, Clerk  
By: Rita Storms

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Diane Troxell, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: June 13, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA

Sheila Sullivan Polk  
Yavapai County Attorney  
Bill Hughes, Esq.  
Deputy Yavapai County Attorneys

(Plaintiff)

(For Plaintiff)

vs.

JAMES ARTHUR RAY

Thomas K. Kelly, Esq.  
425 E. Gurley  
Prescott, AZ 86301

Luis Li, Esq.  
Brad Brian, Esq.  
Truc Do, Attorney at Law  
Miriam Seifter, Attorney at Law  
MUNGER TOLLES & OLSON LLP  
355 S. Grand Avenue, 35<sup>th</sup> Fl.  
Los Angeles, CA 90071

(Defendant)

(For Defendant)

**RULING ON DEFENDANT'S ORAL MOTION  
RE PLAYING EXHIBITS 1084, 1085 AND 1086 DURING CLOSING ARGUMENTS**

The Court has been informed the Defendant has withdrawn his request regarding exhibit 1086. The following ruling therefore pertains to exhibits 1084 and 1085.

The parties do not dispute that the exhibits in question have been played to the jury during the State's case-in-chief and were admitted as evidence in that fashion. This Court is not aware of any rule or other authority that would prohibit presentation of this admitted evidence (in the form of the playing of the recorded statements) during closing argument. As the Court noted during oral argument on this issue, the parties did not present transcripts of proceedings directly related to the admission of the evidence prior to its initial presentation in Court. Arguments and rulings relating to Rule 106, hearsay or other grounds for objection, however, had to be made at the time the evidence was admitted. Although the evidence was not offered for the truth of the matter asserted and therefore did not constitute hearsay, it was presented to the jury in a manner that would be consistent with the provisions of Rule 803(5)

(Recorded recollection). If a party believed that the Court's rulings were in error, a request to recall a witness or reconsider the ruling could have been presented during the State's case-in-chief. This evidence was admitted during trial, and it may be presented in the context of closing argument.

DATED this 13<sup>th</sup> day of June, 2011.

  
**Warren R. Darrow**  
**Superior Court Judge**

cc: Victim Services Division